



State of Washington  
Department of Retirement Systems (DRS)  
Request for Proposals  
(RFP 01-600)

**PROJECT TITLE:** ELECTRONIC DATA IMAGING  
MANAGEMENT SYSTEM  
(EDIMS) Support Services

**PROPOSAL DUE DATE:** August 3, 2001 12 NOON PST

**EXPECTED CONTRACT PERIOD:** September 1, 2001 through June 30, 2003

**VENDOR ELIGIBILITY:** This procurement is open to those Vendors that satisfy the minimum qualifications stated herein and that are available for work in Washington State and are licensed to conduct business in Washington State.

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## 1. Introduction

1.1. Purpose - The purpose of this Request for Proposal (RFP) is to select a vendor to assist agency staff in the technical maintenance of the recently implemented EDIMS system and all the software components included in that implementation.

1.2. Objectives- The objectives for this effort are to assist agency staff in:

- Maintaining the operational status of the EDIMS system.
- Providing technical guidance and expertise in researching and resolving production processing issues.
- Providing technical guidance and expertise in resolving any technical issues with EDIMS related software and hardware vendors as they arise.
- Providing technical guidance and resource in the analysis, design, construction and implementation of any approved enhancements to the EDIMS system.
- Providing current releases of all necessary application software.

1.3. Background - The Washington State Department of Retirement Systems (DRS) is a state agency created by the 1976 Washington State Legislature. DRS currently administers the state's seven (7) public sector retirement systems with a total of twelve (12) separate plans that have a combined total value of approximately \$37 billion.

During the past several years, DRS has systematically consolidated and engineered its business systems to better support growing business needs. During the planning for this reengineering effort, risks associated with paper documents and the potential benefits of imaging and automated workflow on agency operations were identified. As a result two years ago, DRS pursued contracted development of an imaging system with workflow capability.

In the spring of 2001, DRS implemented a production Electronic Document Image Management System (EDIMS) using Avaya (then Lucent) ViewStar software. All incoming member documents, or "new business" documents are now imaged, indexed and routed for subsequent processing using the EDIMS System. External to EDIMS operations, a large number of the related historical member paper files stored at the DRS File Facility are currently being backfile imaged, indexed and stored for future reference and in support of business operations. Backfiled images and index data is then imported into the EDIMS System as it becomes available.

1.4. Period of Performance— Anticipated start date of any contract resulting from this RFP is September 4, 2001. The initial contract term is expected to end June 30, 2003. Three one-year renewals of the contract could extend over a period of up to four (4) years, ending June 30, 2006.

Amendments extending the period of performance, if any, shall be at the sole discretion of the AGENCY.

1.5. Minimum Qualifications- Proposals will be accepted from vendors who:

- ☐ Are licensed to do business in the state of Washington at the time the proposal is submitted;
- ☐ Comply with the Certifications and Assurances set forth in Appendix B;
- ☐ Submit proposals as specified in Section 4 "Proposal Preparation and Submission;" and
- ☐ Are licensed resellers of ViewStar products.

1.6. Definitions - Definitions for the purposes of this RFP include:

Agency – The Department of Retirement Systems (DRS) is the agency of the State of Washington issuing this RFP.

Vendor – Individual or company submitting a proposal in order to attain a contract with the AGENCY.

Contractor – Individual or company whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

Proposal – A formal offer submitted by a Vendor in response to this solicitation.

Request for Proposals (RFP) – Formal procurement document in which a service or need is identified, but no specific method to achieve it has been chosen. The purpose of this RFP is to permit the Vendor community to suggest various approaches to meet the need at a need at a given price.

1.7. ADA - The AGENCY complies with the Americans with Disabilities Act (ADA). Vendors may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

1.8. Contract Approach- Although the AGENCY prefers a single Vendor, the AGENCY reserves the right to award one or more contracts as a result of this RFP. The project described in Section 3, "Statement of Work," is organized into defined tasks. The AGENCY may award the tasks to one or more Contractors if deemed to be in the best interest of the AGENCY based upon the proposals submitted.

2. General Information for Vendors

2.1. RFP Coordinator: The RFP Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Vendor and the AGENCY upon receipt of this RFP shall be with the RFP Coordinator, as follows:

Mailing Address	Hand Delivery Address
Jim Gunn, RFP Coordinator Washington State Department of Retirement Systems P.O. Box 48380 Olympia, WA 98504-8380  Telephone: 360-664-7264 FAX: 360- 586-8820 E-Mail: <a href="mailto:jimg@drs.wa.gov">jimg@drs.wa.gov</a>	Jim Gunn, RFP Coordinator Department of Retirement Systems Point Plaza, Bldg. 3 6835 Capitol Boulevard Tumwater, WA 98501  Telephone: 360-664-7264 FAX: 360- 586-8820 E-Mail: <a href="mailto:jimg@drs.wa.gov">jimg@drs.wa.gov</a>

Any other communication will be considered unofficial and non-binding on the AGENCY. Vendors are to send questions via e-mail and rely on written statements issued by the RFP Coordinator posted on the website below. Upon receipt of this RFP, communication directed to parties other than the RFP Coordinator may result in disqualification of the Vendor.

A copy of this RFP is available on the Department of Retirement Systems' website address: <http://www.wa.gov/drs/agency/index.htm>. Click on the link titled "Information for DRS Vendors". A copy can also be obtained from the RFP Coordinator upon written request. Copies will be sent by U.S. Mail, e-mail, or may be picked up in person by the vendor. Copies will not be faxed to respondents.

## 2.2. Estimated Schedule of Procurement Activities

Key Activity	Date/Deadline (Pacific Standard Time)
Issue request for proposals	Monday July 16, 2001
Deadline for written questions submitted to Jim Gunn at <a href="mailto:jimg@drs.wa.gov">jimg@drs.wa.gov</a> . This is the only acceptable form of submitting questions on this RFP.	Friday July 20, 2001 12:00 NOON
Response to questions issued on website	Questions must be e-mailed. Written questions <u>not</u> sent in this manner will be rejected. Wednesday July 25, 2001
Proposals due	Friday August 3, 2001 12:00 NOON
Evaluation of proposals complete	Monday August 6, 2001
Interviews/Site Visits (If Necessary)	(Monday-Wednesday August 6-8
Notify apparent successful vendor	Friday August 10, 2001
Notify apparent unsuccessful vendors	Friday August 10, 2001
Contract Negotiations	Monday August 13 – Thursday August 16, 2001
File Contract with OFM	Friday, August 17, 2001
Targeted project start date	September 4, 2001

The AGENCY reserves the right to revise the schedule as necessary.

2.3. Acquisition Authority

The issuance of this RFP has been approved by DRS. DRS issues this RFP under Chapter 43.105 of the Revised Code of Washington (RCW). This RFP complies with the policies and procedures of DIS and the Information Services Board (ISB).

2.4. Funding and Expenditure Limit

Funds to purchase identified products and services specified for this acquisition are approved and are within the agency's delegated authority. Any contract awarded as a result of this procurement is contingent upon the continued availability of state agency funding.

2.5. Submission of Proposals

Vendors are required to submit two (2) copies of their completed proposal. Both copies must have original signatures. In addition, the vendor shall provide one (1) electronic copy of the proposal on 3-1/2" diskette in Microsoft Word format. If there are discrepancies, the paper copy shall prevail. (The suggested length of pages to respond to this RFP is 25 pages or less.) The proposal, whether mailed or hand delivered, must arrive at the AGENCY no later than 12:00 NOON, Pacific Standard Time, in Olympia, Washington on Friday, August 3, 2001.

Vendors mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator at the address noted in Section 2.1. Vendors assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using electronic media such as facsimile transmission or e-mail.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

Additional information regarding the submission of proposals can be found in section 4.1.

2.6. Responsiveness

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Vendor is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

2.7. Contract and General Terms and Conditions

The apparent successful VENDOR will be expected to enter into a contract with the AGENCY which is substantially the same as the contract included in this RFP as Appendix C. The AGENCY's General Terms and Conditions must be used and in no event is a Vendor to submit its own standard contract terms and conditions as a response to this RFP. However, the AGENCY will consider modifications if the VENDOR can provide strong reasoning for alternative language. The General Terms and Conditions language in this contract is divided into the following sections:

- Section 6 Vendor's Responsibilities
- Section 7 Contract Termination
- Section 9 Contract Administration
- Section 10 General

2.8. Rejection of Proposals

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

2.9. Most Favorable Terms

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. An exception is that the RFP Coordinator may contact the Vendor for clarification of a portion of the Vendor's proposal. Therefore, the proposal should be submitted initially on the most favorable terms which the Vendor can propose. There will be no best and final offer process. It is anticipated the proposal will be incorporated into the contract resulting from this RFP. It is understood that the proposal will become a part of the official file on this matter without obligation to the AGENCY.

2.10. No Obligation to Contract

This RFP does not obligate the State of Washington or the AGENCY to contract for services specified herein.

2.11. Costs to Propose

The AGENCY will not be liable for any costs incurred by the Vendor in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

2.12. Revisions to the RFP

The AGENCY reserves the right to revise the RFP and/or to post addenda to the RFP. The AGENCY also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract. In the event it becomes necessary to revise any part of the RFP, addenda will be posted on the DRS website at the URL address stated in section 2.1.

For this purpose, the answers to questions submitted will be published in an addendum to this RFP and will be posted on the website.

Vendors must also ensure the AGENCY receives a notice of the Vendor's change of address, telephone number, FAX number or electronic address. Mail or call such notice or changes to the RFP Coordinator listed in Section 2.1.

2.13. Proprietary Information/Public Disclosure

Materials submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract, if any, resulting from this

RFP, is signed by the Director, or his delegate, of the AGENCY and the apparent successful Vendor; thereafter, the proposals shall be deemed public records as defined in RCW 42.17.250 to 42.17.340. Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page and the particular exception from disclosure upon which the Vendor is making the claim must be identified. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The AGENCY will consider a Vendor's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon chapter 42.17 RCW. Marking the entire proposal exempt from disclosure will not be honored. The Vendor must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected Vendor has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify vendor of any request(s) for disclosure within a period of five (5) years from date of contract award under this RFP. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by the vendor of any claim that such materials are, in fact, so exempt.

#### 2.14. Minority and Women-owned Business Participation

In accordance with the legislative findings and policies set forth in chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

#### 2.15. Waiver

The AGENCY reserves the right, at its sole discretion, to waive minor administrative irregularities contained in this RFP.

#### 2.16. ADA Compliance by Vendor

Unless an individual or organization is exempt from compliance with the Americans with Disabilities Act (ADA), the AGENCY will contract only with organizations or individuals who declare their intention to comply with the ADA.



#### 2.17. Acceptance Period

Proposals must provide 120 days for acceptance by the AGENCY from the due date for receipt of proposals.

#### 2.18. Disregard Oral Representations

The Vendor is instructed to disregard any oral representations it may have received. Proposal evaluation will be based on:

- The material contained in the RFP.
- Addenda issued to the RFP.
- The Vendor's proposal including any amendments, oral presentations and interviews to the AGENCY by the Vendor.

#### 2.19. Insurance Coverage

The Contractor is to furnish the agency with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in the General Terms and Conditions, Appendix D.

**Additional Provisions:** The State of Washington, DRS, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

**Cancellation:** The State of Washington, DRS, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

### 3. STATEMENT OF WORK

#### 3.1. Overview of DRS Document Processing Environment

The Department implemented an imaging and workflow services system within its major business areas in the spring of 2001. The EDIMS system is now a primary work resource for approximately 150 staff. It provides a means of work distribution and access to current and historical member documents.

Located off-site, a file facility containing member file folders is undergoing a backfile conversion of the paper documents. This is a separate contracted effort located on a separate system and network, with adequate support supplied by the vendor. Backfiled images and

index data is electronically transferred and imported into the EDIMS system throughout the business day and during off hours. Other than support for the import process, no support services for the backfile effort will be covered by this RFP or subsequent contract.

No further major development within the EDIMS system is planned during the contract period. However, some minor enhancements have been identified and others are likely to be identified as the agency gains experience with the EDIMS system and procedural changes are made. As these are identified, support for their implementation will be covered under services provided by this RFP and subsequent contract.

While the ViewStar 5.1 software provides the core backbone of the EDIMS system, this is a complex system containing customized coding that employs a combination of other software tools. Contractor's services are needed to assist in support of all the software tools deployed in the EDIMS as well as assisting in the resolution of any deployment or performance issues with hardware and software vendors.

The following describes the general architecture of the EDIMS System.

- ◆ System Platform

The EDIMS system is constructed using several development tools. Central to the system is a Viewstar (version 5.1) workflow, which serves as the business processing automation nucleus. System components were developed using Microsoft Visual Basic 6.0 Enterprise (SP3), Viewstar's Business Process Interface (BPI), third-party controls consisting of Sheridan, VideoSoft and Larcom & Young, VBScript and JavaScript. The system's Internet user interface is designed for compatibility with both the Netscape 4x and Microsoft Internet Explorer 5.0 web browsers.

The system consists of one primary application and several smaller support applications, including a Web "view only" application. In addition, there are several applications used to maintain the data in the main application, as well as two database maintenance applications which will not be part of this maintenance contract. The EDIMS Processing application was written in Visual Basic. The EDIMS VTA's (ViewStar Task Architecture) are also written in Visual Basic and run as automated processes on several Process Agent workstations. The EDIMS WebView Application is an Internet application written in Visual Basic Script and JavaScript and consists of active server pages and static HTML forms. All custom applications interface with the Microsoft SQL databases which contains the system control tables.

- ◆ Production System Configuration

The EDIMS Production System provides DRS with the tested, controlled, and released version of the EDIMS system. This system supports DRS staff in the daily performance of their jobs, by providing them with immediate access to information, increased efficiency, and improved customer support. The EDIMS Production System consists of a scan/index/QA component, a workflow component consisting of 22 activities and/or processes, as well as a store/retrieval component, and is fully integrated with the existing DRS network and operating environment. Interface with a legacy mainframe system

running on an off-site IBM System 390 is used to validate document indexing. The Production environment consists of 19 servers and approximately 250 client workstations.

The file servers all run Microsoft Windows NT Server 4.0 and the database servers run Windows NT 4.0 Enterprise Edition and Microsoft SQL Server 7.0 Enterprise Edition:

The following table contains the software configuration used during development of the EDIMS system, all of which requires support.

Description
ViewStar 5.1 Enterprise Document Workflow System
<u>InfoStore@Work</u> (ViewStar Web Component)
Windows NT Server 4.0 with Service Pack 6a
Microsoft SQL Server 7.0 Enterprise Edition SP2
Microsoft SQL Server 7.0 Client
Videosoft Flexgrid Controls
Visual Basic 6.0 Enterprise Edition, SP3
Attachmate Quick API 4.1.1
Kofax Ascent Capture 4.0 Scan Station
Kofax Ascent Capture 4.0 Workstation
Attachmate Extra Client 6.5
Crystal Reports 7 Professional
Sheridan Active Suite Plus
Microsoft Office 97
RightFax v7.2 Server software with NT Channel Upgrade
PC Docs Fulcrum Server
PC Docs Fulcrum Knowledge Activator
Larcum and Young ReSize OCX v3.0

### 3.2. Project Management and Organization

The Vendor will work as an analyst and as a member of the project team, subject to review of the project manager as to the accomplishment of the tasks/deliverables defined in this Statement of Work. The Vendor will provide the services described within this Statement of Work to support the automated system and related procedural changes required in supporting the ongoing operation and enhancements of the EDIMS application.

The Vendor may, at his or her discretion and after advising the EDIMS Project Manager, perform required work off site using his or her own equipment, or on site using DRS facilities. The Vendor is required to be present at and use DRS facilities to the extent that the fulfillment of the contract requires the Contractor to interact with DRS employees.

DRS will provide guidance and review to the Vendor regarding progress toward completion of the tasks/deliverables identified in the Statement of Work. The Vendor is responsible for selecting the most effective means and methods for accomplishing the services required by the contract.

No employees of DRS will be supervised by, or report to, the Vendor staff. The Vendor will be available as a resource to DRS employees when required and will have access to DRS staff for technical expertise and current system knowledge.

The Vendor is responsible for obtaining or possessing any training necessary to complete the contract. The Vendor is responsible for his or her own work schedule, although DRS can require the Vendor's attendance at specified meetings or conferences.

DRS will provide no employee benefits or any reimbursement for travel or any other expenses to the Vendor. The Vendor is engaged for the term of the contract only. No continuing working relationship is contemplated outside the terms of this contract.

The Vendor may, during the course of his or her execution of this contract, provide services to other clients if the services to other clients: (1) Is not a conflict of interest with DRS work as detailed under the General Terms and Conditions of this contract; or (2) Does not interfere with the completion of tasks and deliverables in a timely manner.

The project manager will act as manager of the contracts for DRS and will be responsible for approval of billings submitted by the contractor and the acceptance of deliverables, in this Statement of Work.

### 3.3. Tasks and Deliverables

Because of the diverse nature of the work requested, the AGENCY anticipates that Vendors may find it desirable and/or necessary to bid as partners to complete the scope of work. In addition, because of time constraints, Vendors will have a limited amount of time to prepare and submit a proposal. Vendors are advised to pay close attention to the RFP timeline listed in Section 2.2.

Use of partners, subcontractors, and/or third party vendors does not relieve the vendor of sole responsibility for performance under the contract. The vendor shall be responsible for meeting all of the terms and conditions resulting from this RFP. If at anytime the subcontractors and/or third party vendors of the vendor change, the vendor shall notify DRS in writing prior to making the change. DRS must approve in writing all changes to vendor staffing, including subcontractors and third party vendors.

### 3.4. Summary of Tasks and Deliverables

To support the EDIMS System, DRS and the Vendor are required to provide support in the following areas:

#### ViewStar Software and EDIMS Application Technical Support

Vendor's services are needed to provide expert technical support to the ViewStar imaging and workflow software system developed over the past 18 months and deployed spring 2001.

While the ViewStar 5.1 software provides the core backbone of the EDIMS system, this is a complex system containing customized coding that employs a combination of other software tools. Working with DRS support staff, the selected Vendor's services are needed to provide expert-level assistance in support of all the software tools deployed in the EDIMS as well as assisting in the resolution of any deployment or performance issues with other hardware and software vendors.

Other software deployed within the EDIMS system requiring the Vendor's knowledge and support will include:

- A Microsoft Visual Basic 6.0 developed application provides the customized display and functionality required by DRS.
- Microsoft SQL Server 7.0 provides database services.
- Kofax Ascent Capture 4.1 including forms recognition provides the core scan, recognition and indexing services.
- Attachmate 6.5 software provides interfacing with the agency's mainframe legacy systems via screen scraping of IBM System/390 MVS/CICS applications.
- Crystal Reports 7 is used to produce reports.
- RightFax 7.0 is used to provide fax send and receive services.
- TextBridge software provides "fulltext" capture of data on selected TIF images for storage in a text database.
- PC Docs Fulcrum software provides "fulltext" search capability and maintains the Microsoft SQL "text" database.

#### Web Technology/Client Server

Contractor's services are needed to support the web application interface used to access the stored archived "library" documentation for members. InfoStore@Work (ViewStar Web Component) is used to support Intranet access.

### Support Tasks

To ensure successful support of the EDIMS System, the Vendor's tasks, deliverables and support activities may include, but are not limited to:

- ◆ Participating in enhancement definition process – working with DRS staff to finalize business enhancement requirements and to develop conceptual design alternative models that meet the defined needs and allow DRS technical staff and client representatives to select the appropriate technical approach.
- ◆ Participating in enhancement design – working with DRS staff to define the detail design aspects of the application system modifications and/or development and business procedures so they meet business requirements and project objectives.
- ◆ Creating and/or modifying application modules - modifying the ViewStar system components; modifying the VB application system modules; any required support tool software interfacing modifications; testing the modules and control mechanisms as defined in the system Code-Level Design Document (CDD) specifications; and meeting DRS documentation and testing standards.
- ◆ Support with vendor contacts – any support necessary to allow DRS to clearly communicate problems and resolve issues with EDIMS system related hardware and software vendors. This may include direct hardware and software vendor contact representing DRS' position.
- ◆ Support with a user acceptance environment – any support necessary to allow DRS to maintain an adequate test environment; implementing and testing all modifications in a system test environment prior to production roll-out.
- ◆ Participating in the installation and stabilization of the new enhancements – with DRS staff, install new and/or modified applications into the production environment assuring that interfaces to other existing systems function as anticipated and reacting to and resolving initial problems as they arise.
- ◆ Transfer of knowledge - working with the EDIMS Project Manager, develop and implement a work plan to ensure a successful knowledge transition to DRS support staff and provide mentoring where needed.

#### 4. Proposal Presentation and Format

- 4.1. All Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper with tabs separating the four major sections of the proposal. Submittal documents, including Letter of Submittal signed by the vendor's representative authorized to make contractual obligations, are to be submitted in the order noted below:

Letter of Submittal

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Part 1: Project Management Proposal

Part 2: Executive Summary

Part 3: References

Part 4: Cost Proposal, including mandatory Cost Worksheet, Appendix C

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Vendors in preparing a thorough response.

#### 4.2. Letter of Submittal

The letter of submittal must be written on the Vendor's official business letterhead, and must include the following introductory remarks, in the order given:

- ◆ Itemization of all materials and enclosures being forwarded collectively in response to the RFP;
- ◆ Reference to all RFP amendments received by the Vendor (by amendment issue date) to ensure the Vendor is aware of all such amendments in the event there are any; if none have been received by the Vendor, a statement to that effect should be included;
- ◆ Certification that all information in the proposal is correct;
- ◆ A statement which acknowledges and agrees to all of the rights of the AGENCY including the procurement rules and procedures, terms and conditions, and all other rights and terms specified in this RFP;
- ◆ Assurance of the Vendor's willingness to enter into an agreement with the AGENCY which includes the terms and conditions of this RFP, the Vendor's proposal, the contract included in Exhibit C of this RFP, and the complete RFP document including any amendments.

Letter of Submittal shall include the following Vendor information:

- ◆ State the business name, address, e-mail address, principal place of business, telephone number, and fax number of legal entity or individual with whom the contract would be written.
- ◆ Provide the names, addresses, telephone and fax numbers of principal officers (president, vice president, treasurer).
- ◆ Specify the legal status of the Vendor (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
- ◆ Include the Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue, and expiration dates if applicable.
- ◆ State the location of the facility from which the Vendor would operate.

#### 5. Project Management & Staffing Plan

The vendor must explain how it plans to manage and staff the support levels required. This includes the number of staff expected on-site, other off-site specialized resources that might be called upon, source of the staffing, and the structure of the organization.

##### 5.1. Project Management Structure

Detail your project management and staffing structure including:

- ◆ Management personnel
- ◆ For each proposed on-site technical personnel
  - ◆ What role will they play?
  - ◆ What expert skills and experience will they bring to DRS?
- ◆ For each proposed off-site technical personnel
  - ◆ What role will they play?
  - ◆ What expert skills and experience will use to support EDIMS off-site?
- ◆ Other available support personnel
  - ◆ What role will they play?

## 5.2. Approval of Project Management and On-Site Personnel

Resumes for the project management personnel and all on-site technical personnel will be provided as part of the vendor's proposal.

The vendor will manage the remainder of the staffing requirements. DRS reserves the right to approve or reject any of Vendor's on-site staff and any changes or additions to Vendor's on-site staff.

## 5.3. Subcontractor Relationships

If any part of the proposed solution will be subcontracted to another entity, please describe in detail. At a minimum, provide a detailed corporate overview, references, and scope / description of their involvement.

## 6. Executive Summary

Corporate Overview - The vendor must provide background information for their company and its history of providing support services. Details should include its experience, history, and future directions.

The vendor must describe the length of time their organization has provided support services and specifically, ViewStar support.

### 6.1. Reference Accounts

Reference information must be provided to demonstrate the vendor's experience in similar application support efforts. Vendor must provide the following:

- A brief statement explaining their experience in supporting other sites where ViewStar software is used. Please indicate which if any of the other software tools used within the EDIMS system were present within the system supported and indicate the level of support provided by their staff.
- A minimum of three client references and a list of all similar engagements over the past two years. References may be contacted and asked to respond to a list of questions about the vendor and its services.
- Each reference should include the following information:
  - Company name



- Company address
- Contact name
- Contact telephone number
- Brief description of the system being supported.
- Completion date of the support contract.
- The vendor shall specify how DRS should contact the references. The contact shall be the person who is (or was) directly involved in the project (not the procurement officer).
- DRS reserves the rights to obtain reference information from sources other than those reported in the vendor's proposal and use that information in evaluating the vendor.

## **7. COST PROPOSAL**

The vendor must provide the following:

- A cost schedule for ALL services needed to meet the requirements that are outlined in this RFP. Each cost should be itemized such that, should DRS decide that they do not want a specific service, the associated cost can be easily identified.
- A price schedule for any additional or optional hardware (including detail specifications) and software which DRS would retain title to at the conclusion of this contract is required. DRS shall have the option to procure the hardware from the vendor through a separate procurement process.
- Any anticipated travel expenses must be incorporated into the vendor's fee. Travel expenses do not need to be itemized. Travel expenses cannot be paid on an "as incurred basis," an "out of pocket" basis, or as "miscellaneous or sundry."

### **7.1. Cost Worksheet**

A Cost Worksheet must be completed for the proposed professional services fee structure.

### **7.2. Hardware and Software Costs and Pricing**

The vendor shall provide a list of any hardware and software and associated costs expected with this contract. If none will be necessary, state NONE. Vendor shall describe any needed software or hardware, and what will remain in possession of DRS at the conclusion of the Contract.

### **7.3. Professional Services Costs & Pricing**

The vendor shall provide the professional services hourly fee structure and any related costs (provide specific cost areas) that will be made available under this contract. This will include a brief description of each position, the number of personnel anticipated to be involved, the minimum and maximum acceptable number

of hours per month and total cost per hour for each role or staff person proposed.

Third party and subcontractor services included in this proposal shall be described, including:

- Names and addresses
- Statement of what equipment or software that they will be supplying
- Description of type of contractual arrangement that shall exist with the subcontractor

#### 7.4. Agency Reservation of Right To Equivalent Evaluation Comparison

DRS may, at its sole discretion, select or reject individual items of services, equipment and/or software proposed by the vendor. As part of the evaluation process, DRS may find it necessary to add or delete services, hardware, and/or software from the vendor's proposal to make equivalent evaluation comparisons.

### 8. EVALUATION OF VENDOR PROPOSALS

An Evaluation Committee made up of representatives from the Department of Retirement Systems and other state personnel will be assembled to evaluate the proposals. DRS reserves the right to contact vendors during the evaluation process for the purpose of clarification, if necessary. DRS has the option to contacting the Better Business Bureau and additional industry sources to confirm good business practices and use the information as part of the evaluation.

The evaluation criteria reflect a wide range of considerations. While purchase price is important, other factors are equally significant. The objective is to choose a reliable and experienced vendor capable of providing an effective solution within a reasonable budget and timeframe. Consequently, the State may not select the lowest cost solution.

The proposal will be evaluated using the following criteria based on their weight or importance:

- Technical Expertise (40%)  
The technical training and expertise of the proposed contractor staff.
- Management Services and Support (20%):  
The ability of the vendor to provide professional services and support during the duration of the contract period and potential extension period.
- Cost (30%):  
The cost of the proposed services will be evaluated based on professional services fee structure and any related "expense" costs.
- Vendor Viability and Vision (10%):

The financial stability and viability of the vendor. The vendor will also need to demonstrate a viable vision of the future of the company and services provided.

If any variance in prices between the summary costs and detailed costs is found, the detailed pricing shall prevail.

8.1. RFP and Response Included in Contract

The general conditions and specifications of the RFP and the successful vendor's response will become part of the contract by reference only.

8.2. Publicity

No informational packets, notices, press releases, research reports, and/or similar public notices concerning this project may be released by the Apparent Successful Vendor without prior written approval by the Director of DRS.

8.3. Non-Endorsement

As a result of the selection of a vendor to supply products and/or services to DRS, DRS is neither endorsing the vendor's product nor suggesting that the vendor's product is the best or only solution. The vendor agrees to make no reference to DRS in any literature, promotional material, brochures, sales presentation or the like without prior written consent of DRS.

8.4. Correction of Minor Errors

DRS reserves the right to make minor corrections or amendments to proposals by the vendor for errors such as typing, transpositions, or any other obvious errors. Any changes will be date and time stamped and attached to proposals. All changes must be coordinated in writing with, authorized by, and made by the RFP Coordinator. Vendors are liable for all errors or omissions contained in their proposals.

9. PROTEST PROCEDURE

9.1. General

This procedure is available to Vendors who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Vendor is allowed three business days to file a protest of the acquisition with the RFP Coordinator.

Vendors protesting this procurement shall follow the procedures described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes an administrative remedy available to Vendors under this procurement.

## 9.2. Submitting a Protest

All protests must be submitted within 5 days of the announcement of the apparent successful vendor, in writing and signed by the protesting party or an authorized agent. The protest must state the grounds for the protest with specific and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- ♦ A matter of bias, discrimination or conflict of interest on the part of the evaluator;
- ♦ Errors in computing the score;
- ♦ Non-compliance with procedures described in the procurement document.

## 9.3. Final Determination

Upon receipt of a protest, a protest review will be held by the AGENCY. All available facts will be considered and the AGENCY Director or his/her delegate will issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay. In the event a protest may affect the interest of another Vendor who submitted a proposal, such Vendor will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action; or
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the AGENCY options which may include:
  - Correct the errors and reevaluate all proposals and/or;
  - Reissue the solicitation document and begin a new process or
  - Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful Vendor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken. The AGENCY'S decision is final, with no further administrative recourse.

## **APPENDIX A**

### **CHECKLIST FOR RESPONSIVENESS**

#### **RFP #01-600**

<ul style="list-style-type: none"><li>▪ Required number of proposal copies were submitted: Two paper copies and one diskette</li></ul>
<ul style="list-style-type: none"><li>▪ Proposal was formatted into four major sections:<ol style="list-style-type: none"><li>1. Project Management Proposal</li><li>2. Executive Summary</li><li>3. References</li><li>4. Cost Proposal.</li></ol></li></ul>
<ul style="list-style-type: none"><li>▪ Vendor meets qualifications of Section 1.3 – Vendors must<ol style="list-style-type: none"><li>1. Be licensed to do business in the state of Washington;</li><li>2. Comply with Certifications and Assurances set forth in Appendix B;</li><li>3. Submit proposal as specified in Section 4 "Proposal Preparation and Submission."</li></ol></li></ul>
<ul style="list-style-type: none"><li>▪ Letter of Submittal and Certifications and Assurances were signed by an individual authorized to bind the Vendor to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the sole proprietor if a sole proprietorship.</li></ul>
<ul style="list-style-type: none"><li>▪ Vendor has submitted three business references.</li></ul>
<ul style="list-style-type: none"><li>▪ Vendor has submitted cost information including Cost Worksheet (Appendix C).</li></ul>

## **APPENDIX B**

### **CERTIFICATIONS & ASSURANCES FORM**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 120 days following receipt, and it may be accepted by DRS without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 120 day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that DRS will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of DRS, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any proposed modifications to these terms, I/we have described those proposed modifications in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit a proposal for the purpose of restricting competition.

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Signature of Proposer

Date

**APPENDIX C**  
**COST WORKSHEET**

The following Cost Worksheet shall be completed to provide DRS with a detailed breakdown of individual item costs. Relevant detail or items should be included. If a line item is not applicable to Vendor's proposal, use the abbreviation "N/A".

Service Item	Rate: Hourly/Event	Minimum Monthly Hours	Maximum Monthly Hours	Extended Costs
• Professional Services				
Project Management				
On-site Support Services				
Off-site Support Services				
Other Services				
• Other				

**APPENDIX D**  
**Washington State Department of Retirement Systems**  
**Contract DRS**  
**EDIMS Maintenance Contract**  
**S A M P L E**

This Contract is made by and between the Washington State Department of Retirement Systems P.O. Box 43830, Olympia, WA 98504-8380 (hereinafter “DRS” or “Purchaser”) located at 6835 Capitol Boulevard, Tumwater, Washington and \_\_\_\_\_, located at \_\_\_\_\_. \_\_\_\_\_ is a corporation licensed to conduct business in the state of Washington under UBI number \_\_\_\_\_

The purpose of this contract is for the Vendor to (1) provide ongoing hardware and software maintenance, and (2) respond in a timely manner to repair and resolve malfunction problems when reported by Purchaser.

**1. CONTRACT TERM**

**1.1. Contract Term**

Initial Contract Term - The initial term of this Contract shall be from September 1, 2001 through June 30, 2003. Date of execution shall be the date of the signature, latest in time. The initial contract term shall expire on June 30, 2003. The term of this Contract may be extended by three (3) additional one (1) year terms at the prices set forth in Schedule A, Authorized Product and Price List, and thereafter, and extension of period of performance is at the sole discretion of DRS: PROVIDED, the extensions shall be at the option of DRS and shall be effected by written notice of intent to extend this Contract sent to the Vendor not less than sixty (60) calendar days prior to the expiration of the then current Contract term and Vendor accepting such extension prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

**1.2. Survivorship**

All transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that, by their sense and context, are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Disputes, Limitation of Liability, Patent and Copyright Indemnification, and Protection of DRS’ Confidential Information shall survive the termination of this Contract.

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## 2. DEFINITIONS

### 2.1. Definition of Terms

Terms used throughout this Contract shall have the meanings set forth below.

“**Business Days and Hours**” shall mean Monday through Friday, 6:00 a.m. to 6:00 p.m., Pacific Time, except for holidays observed by the State of Washington.

“**Contract**” shall mean this document, all schedules, exhibits, and amendments hereto.

“**Department of Retirement Systems**” shall mean the same as “Purchaser.”

“**Exhibit A**” shall mean the Request for Proposal issued by DRS dated on July 13, 2001.

“**Exhibit B**” shall mean the Vendor’s proposal dated\_\_\_\_\_.

“**EDIMS System**” shall mean all hardware third party software and ViewStar software together with the custom programming that comprise the production imaging system.

“**Order Document**” shall mean any DRS document and attachments thereto specifying the Services to be purchased from the Vendor under this Contract.

“**RFP**” shall mean the Request for Proposal used as a solicitation document in this procurement, as well as all amendments and modifications thereto.

“**Related Services/Services**” shall mean those services provided under this Contract and related to the Software being maintained and the scope of this Contract.

“**Software**” shall mean ViewStar software and all third party and custom programming.

“**Specifications**” shall mean the technical and other specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Vendor’s Proposal, Exhibit B, collectively.

“**Subcontractor**” shall mean one not in the employment of the Vendor, who is performing all or part of the services under this Contract under a separate contract with the Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“**Vendor**” shall mean \_\_\_\_\_, its employees and agents. “Vendor” also includes any firm, provider, organization, individual, or other entity performing services under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

## 3. CONTRACT SCOPE

### 3.1. General

Vendor agrees to sell and DRS agrees to purchase maintenance for software and ViewStar software support as described in Schedule A, Authorized Products list.

### 3.2. Vendor Role and Subcontractors

Vendor shall be responsible for performance of its obligations as described herein. Vendor may, with prior written permission from the Purchaser (which permission shall not be unreasonably withheld), enter into subcontracts with third parties for its performance of any part of the Vendor’s duties and obligations. Any such approval may be rescinded for reasonable cause upon thirty (30) days prior written notice to Vendor.

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The Purchaser reserves the right to reject or refuse admission to any Vendor or Subcontractor personnel whose workmanship is substandard or who fails to provide services. Vendor's use of any Subcontractor shall not cause the loss of any warranty from Vendor or any Equipment or component manufacturer.

Vendor shall remain solely responsible and liable to the Purchaser for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to DRS for any breach in the performance of Vendor's duties. Vendor further agrees to indemnify, defend and hold harmless DRS for acts or omissions of its Subcontractor as described in Section 73 of the Contract.

Vendor shall require any Subcontractor to provide DRS and State and federal auditors with access to a Subcontractor's records at no additional cost to the extent necessary to conduct audits. In the event that DRS consents to subcontracting, Vendor shall include in all subcontracts the following provision: "This Agreement is a subcontract under the terms of a prime contract with the State of Washington, Department of Retirement Systems."

In the event DRS consents to subcontracting, all appropriate provisions of this Contract and any amendments thereto shall extend to and be binding upon and inure to the benefit of the successors, assignees, or delegates of the respective parties.

### 3.3. Services

#### Time is of the Essence

In performing its obligations under this Contract, Each party understands and agrees that time is of the essence in connection with its performance under this contract.

#### Standards of Work

Vendor represents and warrants that it shall perform all Services required under this Contract in a professional manner, and in accordance with the Specifications set forth in the RFP attached as Exhibit A. Vendor shall re-perform any Services not in compliance with this warranty brought to its attention by DRS within a reasonable time (not to exceed thirty (30) days) after the applicable Services are performed.

#### Necessary Resources

Except as specifically provided in this Section, Vendor shall provide the personnel and any other materials and resources necessary for the performance of its Services. DRS shall provide access to its facility for all Vendor's staff as necessary for Vendor to perform the Services. Vendor's staff must provide all necessary equipment without additional cost not mentioned in this section.

#### Reference Check on Vendor Staff and Subcontractors

Due to the confidential nature of the information and materials that will be accessible to Vendor, DRS may conduct a reference check on Vendor staff or Subcontractors to be used to provide the Services. DRS reserves the right in its sole discretion to reject any proposed Vendor staff or Subcontractor as a result of information produced by such reference checks, provided that DRS provides, in writing, the reason for the rejection.

#### 4. PRICING, INVOICE AND PAYMENT

##### 4.1. Pricing

The Vendor agrees to provide Maintenance, Support and other Related Services at the costs, rates, and fees set forth below and in the Authorized Product and Price List attached as Schedule A, with any additions as specified in the Vendor's proposal dated \_\_\_\_\_  
Software Maintenance and Support Fees - DRS shall pay maintenance and support fees to the Vendor calculated at one hundred percent (100%) of the Vendor's maintenance and support fees as set forth in the Authorized Products and Price List (Schedule A) for the Software product.

Such costs, rates, and fees may not be increased during the term of this Contract, nor for the following two terms; except as explicitly authorized by terms elsewhere in this contract.

Beginning with the fourth term of this contract, and at least 120 calendar days before the end of the then current term of this Contract, the Vendor may propose purchase price and maintenance and support (service) rate decreases and/or increases by written notice to the DRS Contract Administrator. The proposed fixed cost price and/or rate increases shall not be inconsistent with the other terms of this Contract or the RFP regarding future rate increases. Price adjustments will be taken into consideration by the DRS Contract Administrator when determining whether to extend this Contract.

##### 4.2. Taxes

DRS will pay sales and use taxes imposed on the Maintenance or Related Services acquired hereunder. The Vendor will pay all other taxes including, but not limited to, Washington Business and Occupation Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal property to which DRS does not hold title. Vendor will pay all applicable taxes under Vendor's federal and state identification number(s). DRS, as an agency of the Washington State Government, is exempt from property tax.

##### 4.3. Invoice and Payment

Payments for Maintenance listed in Schedule A Authorized Product and Price List shall be made in the amounts indicated on Schedule C Payment Schedule for EDIMS at the beginning of each contract period.

The Vendor will submit properly itemized invoices and/or vouchers to DRS. All invoices submitted must meet with the approval of the Contract Manager or his or her designee prior to payment. Invoices must reference this Agreement and shall provide and itemize, as applicable:

- a) Contract number 01-601
  - b) Professional services
  - c) Description of Maintenance and/or Licensing agreement
  - d) Yearly maintenance charges;
  - e) Net invoice price for each item;
  - f) Applicable taxes;
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- g) Other applicable charges;
- h) Total invoice price; and
- i) Payment terms including any available prompt payment discounts.

Such payments shall be due and payable within thirty (30) calendar days after receipt of properly prepared invoices. Incorrect or incomplete invoices will be returned by DRS to the Vendor for correction and re-issuance.

This Contract number 01-601 must appear on all invoices and correspondence relating to this Contract. DRS shall not honor drafts, nor accept goods on a sight draft basis. If DRS fails to make timely payment, Vendor may invoice DRS one percent (1%) per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of receipt of Vendor's properly prepared invoice.

#### **4.4. Withholding Payments**

After exhausting the remedies provided in the Escalation, Disputes sections, DRS shall have the right to withhold any and all payments still at issue and Vendor shall waive any late fees regarding amounts at issue. Nothing herein impairs the right of DRS to terminate this contract as set forth in the section titled "Contract Termination".

#### **4.5. Overpayments to Vendor**

Within thirty (30) days of receipt of written notice thereof, Vendor shall promptly refund to DRS the full amount of any erroneous payment or overpayment to which Vendor is not entitled pursuant to this Contract.

### **5. CONTRACT MANAGEMENT**

#### **5.1. Vendor Point of Contact**

Vendor will assign to this Contract as Vendor's Point of Contact an individual of a management level sufficient to assure timely responses from all Vendor personnel. Vendor agrees and represents that Vendor's Point of Contact will be fully qualified to perform the tasks required of that position under this Contract. Vendor's Point of Contact shall be responsible for acting as a liaison with the Contract Administrator and shall function as Vendor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. Vendor's Point of Contact shall be able to make binding decisions pursuant to this Contract for Vendor. If Vendor's Point of Contact is removed, replaced or terminated, or terminates his or her employment with the Vendor, Vendor will promptly provide notice to the Purchaser and provide another Vendor's Point of Contact.

#### **5.2. DRS Contract Administrator**

EDIMS Project Manager, is designated as the Contract Manager and Vendor's Point of Contact for the contractual relationship. The Contract Manager will be responsible for:

- a) Supervision of all maintenance tasks identified in the RFP and the
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Proposal

- b) Coordinating the reporting, review and quality assurance process;
- c) Facilitating the effective participation of State staff;
- d) Resolving questions raised by Vendor requiring clarification of DRS requirements, policies, and procedures;
- e) Approving payments;
- f) Facilitating the timely resolution of issues raised by principal Contract participants

5.3. Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, or transmitted by fax with a follow-up copy sent via first-class mail, postage prepaid, to the parties at the following addresses:

to **Vendor** at:

to **Purchaser** at:      State of Washington  
Department of Retirement Systems  
Attention: EDIMS Project Manager  
P. O. Box 48380  
Olympia, WA 98507-8380  
*Tele (360) 664-7156 Fax (360) 586-8820*

Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four (4) calendar days after mailing. The notice address as provided herein may be changed by written notice given as provided above.

5.4. Supplemental Contracts

DRS may undertake or award contracts for work related to the Contract, or any portion thereof. Vendor shall cooperate with such other vendors and DRS in all such cases. Vendor will ensure that all Subcontractors will abide by this provision.

**6. DELIVERABLES**

6.1. General

As long as DRS continues to pay for support Services on an uninterrupted basis as provided for herein, the Vendor shall make available support Services for the System on an uninterrupted basis. Such support services shall be available for the Software comprising the EDIMS System whether or not such software is obtained through the Vendor under this Contract or by DRS in another name. Support shall be made available for an annual fee, or on an "as needed" basis at the Vendor's hourly rate. During the term of this Contract, Vendor agrees to guarantee annual and hourly rates for Technical On-

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Site Support Services, as reflected in Schedule A, Authorized Products and Price List.

6.2. EDIMS Software Support

Vendor agrees to provide support for the EDIMS system which consists of:

- a) Toll Free hotline access to the Vendor customer service help desk for reporting and isolating system problems, dial-in diagnostic services, and resolution strategies provided either in writing, fax, or over the phone. The Help Desk will be accessible via toll-free hotline, email, fax, web, or automatic paging system during DRS main business hours (weekdays, 6:00 a.m. to 6:00 p.m. PST/PDT, excluding all DRS recognized holidays). Target response time is one hour.
- b) Problem escalation services where Vendor works on DRS' System Administrator's behalf in escalating problems or bugs to the appropriate third party vendor for workaround, resolution, or update.
- c) Problem tracking and reporting services where all customer incidents and status are tracked in the Vendor's Customer Service Database. Incident reports and summary data will be provided to the customer upon request.
- d) Applications consulting services: consulting with Vendor's Software Development Engineers for applications assistance at Vendor's facilities or over the phone.
- e) Vendor's Help Desk Support for escalation services, and phone assistance with application problems resolution and bug fixing (in addition to the platform software support issues).
- f) Online access to Vendor's internal support knowledge databases and support tools, tips and practical techniques.
- g) Modem and software to allow Vendor's personnel to perform remote diagnostics and troubleshooting.

6.3. Software (Viewstar) Maintenance

Vendor shall provide the following Services:

- a) Telephone Support - Vendor will provide telephone support, toll-free in the United States, to DRS during DRS' business days and hours. Vendor's telephone service shall include but is not limited to the following services:
    - i.) Assistance related to questions on the use of the subject Software;
    - ii.) Assistance in identifying and determining the causes of suspected errors or malfunctions in Software;
    - iii.) Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;
    - iv.) Information on errors previously identified by DRS and reported to Vendor and detours to these where available; and
    - v.) Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Vendor.
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- b) Vendor's Software Bug List - Vendor shall provide DRS a copy of its current "Software Bug List" on a monthly basis, unless a different frequency of reporting is agreed to by the parties.
- c) On-line Support - Vendor may execute on-line diagnostics from a remote Vendor location to assist in the identification and isolation of suspected Software errors or malfunctions.
- d) Maintenance Release Services - All software updates, new releases and patches or fixes to standard ViewStar software, subject to availability by the supplying vendor. Vendor will provide error corrections and maintenance releases to the Software which have been developed by Vendor. Such releases shall be licensed to DRS pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform DRS of the problems resolved including any significant differences resulting from the release which are known by Vendor. Vendor agrees that each maintenance release of Software will be compatible with the then current unaltered release of Software applicable to the computer system.

6.4. Error and Malfunctions:

The Vendor shall provide the following within eight (8) business hours of receiving oral or written notification by DRS of identified errors or malfunctions in the Software. Vendor will either:

- a) Provide DRS with detour or code correction to the Software error or malfunctions. Each correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform DRS of the problem resolved and any significant operational differences resulting from the correction which is known by Vendor, **or**

Provide DRS with a written response describing Vendor's then existing diagnosis of the error or malfunction and generally outlining Vendor's then existing plan and timetable, subject to DRS' approval, for correcting or working around the error or malfunction.

DRS shall be responsible for providing Vendor with adequate information to duplicate or verify the error or malfunction, and for cooperating with Vendor in identifying such errors or malfunctions. The vendor shall ask relevant questions to clarify the information presented to make its diagnosis.

- b) Provide On-Site Support if a problem occurs which significantly impacts DRS' usage of the Licensed Software and remains unidentified or unresolved either by detour or permanent correction after DRS has taken the Vendor-prescribed action, and DRS and Vendor have mutually agreed that on-site support is required.

Vendor will dispatch a representative to the system location during business days

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and hours, which representative must arrive within a mutually agreed upon timeframe. Should DRS require on-site support, such services will be performed by Vendor at Vendor's then applicable hourly rates plus travel and expenses.

6.5. Support Services:

The Vendor shall provide or make available:

1. Advice and assistance in diagnosis and identification of errors or malfunctions in the Licensed Software.
2. On-site consultation on correction or detour of identified errors or malfunctions.
3. Advice and assistance on completion of form to report errors or malfunctions to Vendor as specified in the reporting procedure

6.6. Vendor's Response to Support Calls:

Documentation: All calls for support will result in the prompt initiation of a problem log containing the time the Vendor's help desk was notified, problem severity level, and any information deemed relevant to the resolution of the problem. All problems called in will promptly be assigned a severity level according to the following criteria:

- a) Severity 1 - For Production System and Development System. Total loss of system function, i.e., System "down." Loss of functionality affecting fifty percent or more of production or development users. Inaccessibility or corruption of data, images, etc. preventing an accurate characterization of the problem as one of a lesser severity.
- a) Severity 2 - Significant loss of functionality preventing attainment of business goals. No available work-around or work-around is unacceptable. Development issues that are urgent. A loss of functionality of severity level 2 which affects more than fifty (50) percent of the System production users will be assigned a severity level of 1. Severity 2 also includes temporary, isolated System function or administrative problems which require assistance, but do not impact system performance or function. Information issues or questions, "How-to" questions. Any minor, temporary or infrequent issues which affect a limited number of functions or users. Information, issues or questions that do not affect business goals. ViewStar product design suggestions.

Severity Level: Severity levels may be upgraded or downgraded as problem resolution is implemented. Severity levels, including any upgrade or downgrade, will initially be assigned by the Vendor's support technician through Vendor's Help Desk. The Vendor's Help Desk will inform DRS of the plan of action for resolution of the problem, to include gathering of background information and attaining additional technical support, if required. In the event of dispute over the severity assignment of a particular problem call, the determination of Severity level shall be made by DRS' Contract Administrator, or designee, in consultation with the EDIMS System Administrator and the Customer Support Manager.

Response Time: If a System problem is of Severity level 1 and: (1) has not been diagnosed two hours from the time the call is logged or (2) has been diagnosed but cannot reasonably be expected to be remedied without the Vendor's provision of Vendor's on-

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site support or on-site maintenance, DRS and the Vendor shall have the option to mutually determine when on-site support or maintenance is necessary. Once agreed that on-site support or maintenance is required, the Vendor will dispatch the appropriate personnel to arrive on-site at DRS' location and at DRS' expense, except where such expense is covered under other warranty provisions or support contracts, within a mutually agreed timeframe of the determination that on-site support or maintenance is needed.

Resolution: If a problem of Severity Level 1: (1) has not been resolved more than two hours from time DRS' problem call was initially logged by the Help Desk, (2) on-site support has not been implemented under subsection 37.6 of this paragraph, and (3) the Vendor has not notified DRS of a plan for resolution of the problem that DRS, in its sole discretion, deems adequate, the matter will be escalated according to the provisions of subsection 8, Escalation and Remedies.

Escalation will be undertaken by the Help Desk according to the Escalation procedures in the Escalation, Disputes and Remedies Section of this contract.

## **7. VENDOR'S RESPONSIBILITIES – GENERAL TERMS AND CONDITIONS**

### **7.1. Engineering Changes – Equipment and Software**

Vendor warrants that installation of any engineering changes as Vendor may from time to time require or recommend shall not cause the performance of the Software modified to be materially degraded below the Specifications at the time of installation of the same. Any such changes will be installed at a mutually agreed upon time and documentation updated. Engineering changes will not decrease or cancel any Vendor commitment, warranty or representation.

### **7.2. Software Upgrades and Enhancements**

Vendor shall supply updated versions of the Software including right of the decimal point upgrades from the software vendors to operate on upgraded versions of operating systems; updated versions of the Software which encompass improvements, extensions, or other changes which Vendor, at its discretion, deems to be logical improvements or extensions of the original products supplied to DRS; and interface modules which are developed by the Vendor for interfacing the Software to other Software products.

All upgrades and enhancements covered under this clause will be provided according to the standard commercial practices and charges of the individual software manufacturers. If standard practice includes provision for upgrades and enhancements at no added cost under maintenance, maintenance will be in full effect to qualify for upgrades and enhancements. If required by DRS, services for installation for upgrades and enhancements will be provided by vendor at vendor's then current rates for said services.

### **7.3. Software Documentation**

For all Vendor Software furnished to DRS within the scope of this Contract, the Vendor agrees that in the event it withdraws its support, if any, from such Software, it will immediately furnish to DRS, if requested, at no additional cost, sufficient documentation to permit DRS to maintain, modify or enhance such purchased or Licensed Software unless prohibited by the terms and conditions of the manufacturer's license.

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Vendor grants to DRS, unless prohibited by the terms and conditions of the manufacturer's license, the right to copy or otherwise reproduce manuals and documentation furnished pursuant to this section, for use within the scope of this Contract at no additional charge.

7.4. Installation (Site) Security

While on DRS' premises, Vendor, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Vendor.

7.5. Use of Purchaser's Property and Facilities

Any property of DRS furnished to the Vendor shall be used only for the performance of this Contract. DRS must provide reasonable space and adequate utilities, including telephone services, to the Vendor for installation and maintenance of the equipment with reasonable access to the premises.

The Vendor shall be responsible for any loss or damage to property of DRS which results from willful misconduct or negligence on the part of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices to ensure that the property will be returned to DRS in like condition to that in which it was furnished to the Vendor, reasonable wear and tear excepted. Upon the happening of loss, or destruction of, or damage to any DRS property, the Vendor shall notify DRS thereof and shall take all reasonable steps to protect that property from further damage unless such damage is caused by DRS.

The Vendor shall surrender to DRS all property belonging to DRS upon completion, termination, or cancellation of this Contract. All reference to the Vendor under this section shall include any of its employees, agents, or subcontractors.

The Vendor shall ensure its employees, agents or subcontractors comply fully with all DRS regulations and policies establishing a weapon-, drug-, alcohol-, and smoke-free work place, as well as all policies and regulations governing use of state equipment and facilities, including the Internet.

7.6. Vendor Commitments, Warranties, and Representations

THE WARRANTIES IN THIS CONTRACT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

Any written commitment by the Vendor within the scope of this Contract shall be binding upon the Vendor when signed by an authorized representative of Vendor. Failure of the Vendor to fulfill specific deliverables may constitute breach and shall render the Vendor liable for liquidated or other damages due DRS under the terms of this Contract.

For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:

- a) Prices, discounts, and options committed to remain in force over a specified period of time;
  - b) Any warranty or representation made by the Vendor in a proposal as to Software performance or any other physical, design or functional characteristics of a machine, Software package, system, training, services, or other products within the scope of this Contract;
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- c) Any warranty or representation made by the Vendor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal;
- d) Any modification of or affirmation or representation as to the above which is made by Vendor in writing during the course of negotiation whether or not incorporated into a formal amendment to the proposal in question; and
- e) Any representation by the Vendor in a proposal, supporting documents or negotiations subsequent thereto as to training to be provided, services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Contract.

7.7. Year 2000 Compliance Warranty

Vendor warrants that the Software and Equipment provided pursuant to this Contract is Year 2000 compliant. This warranty includes a representation that dates on and after the year 2000 do not cause computational problems nor do these dates diminish the functionality of the Software and Equipment including, but not limited to, date data century recognition, calculations that accommodate same century and multi-century formulas and date values, year 2000 leap year calculations, and date data interface values that reflect the century. Vendor shall promptly correct, at no added cost, any non-compliance with this Year 2000 warranty. In the event that Vendor cannot, after reasonable opportunity, correct the non-compliant features or diminished functionality, then DRS shall be entitled to a refund of the initial license fee as liquidated damages.

7.8. Protection of Purchaser's Confidential Information

Vendor acknowledges that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the State's services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Vendor agrees to hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or subcontractors requiring such information for the performance of this contract, and not to release or disclose it to any other party. Vendor agrees to release such information or material only to subcontractors who have signed a written Contract expressly prohibiting disclosure. Vendor further agrees to either destroy or return all such information at the end of the term of this Contract.

This section does not impose any obligation on the Vendor if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished to the Vendor; (3) furnished by DRS to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

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7.9. Subpoena

In the event that a subpoena, governmental rules and requirements or other legal process commenced by a third party, in any way concerning the Maintenance or Related Services provided pursuant to this Contract is served upon Vendor or DRS, such party agrees to notify the other party within three (3) working days following receipt of such subpoena or other legal process. Vendor and DRS further agree to cooperate with one another in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

**8. CONTRACT TERMINATION – GENERAL TERMS AND CONDITIONS**

8.1. Termination for Default

If either DRS or the Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days from receipt of such notice subject to extension if reasonably necessary to cure providing the curing party is using due diligence or as otherwise mutually agreed. If the failure or violation is not corrected within the time provided, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party.

In the event of termination of this contract by DRS, DRS, at its sole discretion, shall either:

- a) Return all products received for a refund of the purchase price with the Vendor's total obligation being limited to the total sums received by the Vendor under the Contractor,
- b) Retain the products delivered and accepted at the time of the termination, paying only for such equipment, software and/or services actually provided by Vendor up to time of termination of Contract.

In either event described above, or in the event of termination by Vendor, the Vendor shall not be paid for equipment, software or services, which were not delivered and accepted by DRS prior to the date of the Contract termination.

If it is determined the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience. This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

8.2. Termination for Convenience

The state may terminate this contract, in whole or in part, at any time and for any reason by giving ninety (90) calendar days written termination notice to Vendor, except under the Escalation Clause, then either party has the option to give ten (10) calendar days notice. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Vendor prior to date of termination. Should the parties not agree to a satisfactory

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settlement, the matter may be subjected to mediation and/or legal proceedings.

8.3. Termination for Withdrawal of Authority

In the event that the authority of DRS to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, DRS may terminate this Contract under the Termination for Convenience section. This section shall not be construed so as to permit DRS to terminate this Contract in order to acquire similar Equipment, Software and Related Services from a third party.

8.4. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, DRS will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period, unless such services or equipment has already been received by DRS or already ordered on a non-refundable basis by Vendor. DRS agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to DRS in the event this section shall be exercised. This section shall not be construed so as to permit DRS to terminate this Contract in order to acquire similar Equipment, Software or Related Services from a third party.

8.5. Termination for Conflict of Interest

DRS may terminate this Contract by written notice to the Vendor if it is found, after due notice and examination, that there is a violation by any of the parties hereto of:

- a) Ethics in Public Service, chapter 42.52 RCW; or
- b) Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, DRS shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of this Contract by the Vendor. The existence of facts upon which DRS makes any determination under this clause shall be an issue and may be reviewed as provided in the section titled "Disputes".

8.6. Termination Procedure

Upon termination of this Contract, DRS, in addition to any other rights provided in this Contract, may require the Vendor to deliver to DRS any property or Equipment specifically produced or acquired for the performance of such part of this Contract as has been terminated, provided DRS pays for such property or Equipment. The sections for the Treatment of Assets shall apply in such property transfer.

Unless otherwise provided herein, DRS shall pay to the Vendor the agreed-upon price, if separately stated, for the Equipment, Software or Services received and accepted by DRS: PROVIDED THAT, in no event shall DRS pay to the Vendor an amount greater than the Vendor would have been entitled to if this Contract had not been terminated.

Failure to agree with such determination shall be a dispute within the meaning of the Escalation, Disputes and Remedies section of this Contract DRS may withhold from any amounts due the Vendor for such completed work or Services such sum as the DRS Contract Administrator determines to be necessary to protect DRS from potential loss or

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liability, subject to Vendor's right to dispute under the Escalation, Disputes and Remedies section.

After receipt of a notice of termination, and except as otherwise directed by DRS, the Vendor shall:

- a) Stop work under this Contract on the date, and to the extent specified in the notice;
- b) If termination is to the Equipment purchase sections of this Contract, then DRS shall place no further orders and Vendor shall accept no further orders for additional Equipment;
- c) If termination is to the Maintenance and Support sections, Vendor shall complete all maintenance and support requests made prior to the date of notice of termination, and DRS shall pay for such items, notwithstanding the effective date of termination;
- d) As soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DRS to the extent required, which approval or ratification shall be final for the purpose of this section;
- e) Complete performance of such part of this Contract as shall not have been terminated by DRS;
- f) Take such action as may be necessary, or as DRS may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Vendor and in which DRS has or may acquire an interest;
- g) Transfer title, for all equipment accepted and paid for by DRS, excluding licensed Software, to DRS and deliver in the manner, at the times, and to the extent directed by DRS Contract Administrator, any property which is required to be furnished to DRS; and
- h) Provide written certification to DRS that the Vendor has surrendered to DRS all said property.

The Vendor shall pay the damages due DRS as the result of termination within thirty (30) calendar days of notice.

## **9. ESCALATION AND REMEDIES**

### **9.1. Escalation Process**

Escalation of issues which have been assigned a Severity Level will be undertaken according to the following procedures.

- a) Severity Level: Unresolved problems of Severity Level 1 will be brought to the attention of the Vendor's Customer Support Manager after two hours have passed from the initial problem log. If on-site support has been initiated, travel time will not be included in calculation of the two hours. Unresolved problems of severity level 2 will be brought to the attention of the Vendor's Customer Support Manager after four hours. Unresolved problems of either severity level not resolved after eight hours have elapsed, the Vendor's Customer Support Manager will provide DRS with increased technical and
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management focus on the problem, as well as a mutually agreeable plan for resolution of the problem containing resolution milestones. If on-site support has been initiated, additional support specialists may be brought on-site to assist in the problem correction. The date and time of any escalation of support, as described above, will be recorded in the problem log.

b) Final Escalation: If after ten hours, DRS and the Vendor's Customer Support Manager are unable to agree upon a plan for resolution of the problem, the problem will be escalated to the attention of the Vendor's Corporate President for final resolution. The final step of escalation will be contract cancellation/termination for convenience: Contract cancellation or termination for convenience may be accomplished by either DRS or the Vendor without liability for payment provided a minimum of 10 working days notification, including the day of notice, is given. DRS may terminate this contract for cause without liability for payment at this time if obligations under this contract and such action shall be communicated to the Vendor through the most expedient means available. Subsequent written notification is for record only and not a prerequisite for ending the contract.

#### 9.2. Attorneys' Fees and Costs

If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

#### 9.3. Non-exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

### 10. CONTRACT ADMINISTRATION – GENERAL TERMS AND CONDITIONS

#### 10.1. Section Headings, Incorporated Documents and Order of Precedence

The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

Except for the applicable federal and state statutes, laws and regulations, the documents listed below are, by this reference, incorporated into this Contract as though fully set forth herein. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- a) Applicable federal and state statutes, laws, and regulations;
  - b) Sections of this Contract
  - c) Schedule A - Authorized Product and Price List, to this Contract;
  - d) Exhibit A - State of Washington Department of Retirement Systems Request
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For Proposal (RFP) for Electronic Document Imaging Management System dated July 13, 2001;

- e) Exhibit B - Vendor's Response to the Purchaser, dated\_\_\_\_\_, including all written information provided with Vendor's response;
- f) The terms and conditions contained on DRS' purchase documents, if used; and
- g) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations the Vendor made available to DRS and used to effect the sale of Equipment to DRS, or purports the Equipment is fit for a particular purpose or attests to the Equipment's engineering level, operating condition, functions, capabilities, or merchantability.

#### 10.2. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled Vendor Commitments, Warranties and Representations understandings, contracts, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

#### 10.3. Additional Services and Equipment

DRS and Vendor agree that additional Services, Software and/or Equipment, which are appropriate to the scope of this Contract, may be added to this Contract (Schedule A hereto) by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services, Software and/or Equipment, pricing and additional terms and conditions as relevant. The additional Services, Software and/or Equipment shall be available under the same terms and conditions established herein, unless otherwise agreed to in a signed writing.

#### 10.4. Authority for Modifications and Amendments

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the Vendor and by the Director of DRS or delegate by writing. Only Director of DRS or delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of DRS. Only the President of Vendor or delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of Vendor.

#### 10.5. Independent Status of Vendor

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose

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whatsoever, nor will the Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, chapter 23B.16 RCW, or Title 51 RCW.

10.6. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

10.7. Subcontractors/Third Party Vendors

The Vendor may, with prior written permission from the DRS Contract Administrator enter into subcontracts with third parties for its performance of any part of the Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Vendor to DRS for any breach in the performance of the Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of the Vendor, and the Vendor further agrees to indemnify, save and hold DRS harmless from acts or omissions of the Vendor's Subcontractors, their agents, or employees subject to the limitations set forth in the Limitation of Liability section of this Contract. DRS shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employee, or violations of the Patent And Copyright Indemnification sections of this Contract occasioned by the acts or omissions of the Vendor's Subcontractors, their agents or employees. The Patent and Copyright Indemnification sections of this Contract shall apply to all Subcontractors.

10.8. Assignment

With the prior written consent of DRS, the Vendor may assign this Contract including the proceeds hereof: PROVIDED, that such assignment shall not operate to relieve the Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to DRS that may arise from any breach of the sections of this Contract, its supplements, or warranties made herein including but not limited to, rights of setoff.

With the prior written consent of the Vendor, DRS may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington: PROVIDED, that such assignment shall not operate to relieve DRS of any of its duties and obligations hereunder.

10.9. Review of Vendor's Records

The Vendor and its Subcontractors shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one (1) year following the termination of litigation, including all appeals (if the litigation has not terminated within five (5) years from the date of expiration or termination of this Contract).

All such records shall be subject at reasonable times and upon prior written notice of at

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least five (5) business days to examination, inspection, copying, or audit by personnel so authorized by DRS' Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Thurston County. During the six (6) year period after the Contract term or one (1) year term following termination of litigation, delivery of and access to these items will be at no cost to the State. The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Subcontractors.

The record retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.

It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Vendor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from DRS' review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

## **11. GENERAL TERMS AND CONDITIONS**

### **11.1. Patent and Copyright Indemnification**

- 11.2. Vendor will, at its expense, defend or settle any claim against DRS that Equipment, Software, or work products supplied hereunder infringe any patent, copyright, utility model, industrial design, mask work or trademark. Vendor will pay resulting costs, damages and attorneys' fees finally awarded provided that DRS:

- a) Promptly notifies Vendor in writing of the claim; and
- b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

- 11.3. Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by DRS, including costs paid to the Office of the Attorney General as legal fees. If such claim has occurred, or in Vendor's opinion is likely to occur, DRS agrees to permit Vendor at its option and expense, either to procure for DRS the right to continue using the Equipment or to replace or modify the same so that they become noninfringing and functionally equivalent. If a court enjoins use of the Equipment and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Equipment and refund its depreciated value. No termination charges will be payable on such returned Equipment, and DRS will pay only those charges which were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of five (5) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. In the event the Equipment has been installed less than one year, transportation to the initial installation site paid by DRS shall be refunded by Vendor.

Vendor has no liability for any claim of infringement arising from:

- a) Vendor's compliance with any designs, specifications or instructions of DRS;

- b) Modification of the Equipment or Software by DRS or a third party without the prior knowledge and approval of Vendor;
- c) Use of the Equipment or Software in a way not specified by Vendor; or,
- d) Use of the Equipment with Equipment or Software not supplied by Vendor unless the claim arose against Vendor's Equipment, Software or Services independently of any of these specified actions

#### 11.4. Hold Harmless

Vendor shall protect, indemnify and hold DRS, the State of Washington, its elected and appointed officials, agents and employees, while acting within the scope of their duties as such, harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from such claim, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, agents, or subcontractors.

DRS shall defend, protect and hold harmless the Vendor, or any of the Vendor's agents, from and against all claims and suits arising from both negligent and intentional act(s) or omission(s) of DRS, or agents of DRS, while performing the terms of this Contract. In the case of negligence of both DRS and the Vendor, any damages allowed shall only be levied in proportion to the percentage of negligence attributable to each party.

#### 11.5. Insurance

11.6. Liability and Auto Insurance - Vendor shall, during the term of this Contract and at Vendor's own expense, maintain in full force and effect, the insurance described in this section with an insurance carrier or carriers licensed to conduct business in the state of Washington and approved by the DRS Contract Administrator, which approval shall not be unreasonably withheld. The minimum acceptable limits and types of coverage shall not be less than \$1 million commingled single limit per occurrence for each of the following categories:

- a) Employers' liability covering the risks of bodily injury, property damage and personal injury (including death); with limits not less than \$1 million each accident for bodily injury by accident or \$1 million each employee for bodily injury by disease.
  - b) Commercial General Liability (CGL); and, if necessary, commercial umbrella insurance, with a limit of not less than \$1 million per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) condition.
  - c) Business Automobile liability (owned or non-owned) covering the risks of public liability and property damage. Such insurance shall cover liability arising out of "any auto". Business auto coverage shall be written on ISO
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form CA 00 001, 1990 or later edition, or substitute liability form providing equivalent coverage.

- d) In lieu of providing Errors or Omissions or Malpractice insurance, Vendor has the option to pay DRS not more than \$10,000 for actual damages incurred should a substantiated claim arise regarding errors or omissions or malpractice.

Premiums on all insurance policies shall be paid by Vendor or its Subcontractors. Such insurance policies provided for DRS pursuant to this section shall name DRS, the State of Washington, its elected and appointed officials, agents and employees as an additional insured. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state. All policies must have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have first been given to DRS by such insurer.

Vendor shall furnish to DRS copies of certificates of all required insurance within thirty (30) calendar days of the execution date of this Contract.

Insurance Policies must reference the DRS contract number and the agency name.

Insurance Carrier Rating. All insurance must be issued by companies admitted to do business with the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by DRS before the contract is accepted or work may begin.

Excess Coverage. By requiring insurance herein, DRS does not represent that coverage and limits will be adequate to protect the Vendor, and such coverage and limits shall not limit the Vendor's liability under the indemnities and reimbursements granted to DRS in this contract.

#### 11.7. Industrial Insurance Coverage

Prior to performing work under this Contract the Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. DRS will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Vendor, or any Subcontractor or employee of the Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

#### 11.8. Licensing and Registration Standards

The Vendor shall comply with all applicable local, state, and federal licensing and registrations requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions, as well as requirements of the State Department of Revenue.)

#### 11.9. UCC Applicability

Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

To the extent this Contract entails delivery or performance of services, such services shall

be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

Notwithstanding the Section Headings, Incorporated Documents and Order of Precedence section of this Contract, in the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

#### **11.10. Antitrust Violations**

Vendor and DRS recognize that in actual economic practice overcharges resulting from antitrust violations are in fact usually borne by the Purchaser. Therefore, the Vendor hereby assigns to DRS any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to DRS resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the price under this Contract.

#### **11.11. Compliance with Civil Rights Laws**

During the performance of this Contract, the Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of the Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under the Termination for Default sections, and the Vendor may be declared ineligible for further contracts with DRS. The Vendor shall be given a reasonable time in which to cure noncompliance. Disputes will be resolved in accordance with the section titled "Disputes". In addition to the cancellation of this Contract, Vendor may be subject to penalties under federal and state law.

#### **11.12. Quiet Possession and Usage**

Vendor warrants that DRS upon paying the amounts due hereunder and performing all other covenants, terms, and conditions on its part to be performed hereunder, may and shall peacefully and quietly have, hold, possess, and enjoy the Equipment without suit, molestation, or interruption.

#### **11.13. Severability**

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

#### **11.14. Waiver**

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties hereto.

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#### 11.15. Treatment of Assets

Title to all property furnished by DRS shall remain in DRS. Title to all property furnished by the Vendor, for which the Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in DRS pursuant to the section titled Title and Ownership of Equipment, Software and Other Work Products. As used in this section Treatment of Assets, if the “property” is the Vendor’s proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in DRS. Any property of DRS furnished to the Vendor shall, unless otherwise provided herein or approved by DRS, be used only for the performance of this Contract.

The Vendor shall be responsible for any loss or damage to property of DRS which results from the negligence of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices.

Upon loss, or destruction of, or damage to any DRS property, the Vendor shall notify DRS thereof and shall take all reasonable steps to protect that property from further damage.

The Vendor shall surrender to DRS all property of DRS prior to settlement upon completion, termination, or cancellation of this Contract.

All reference to the Vendor under this section shall also include Vendor’s employees, agents, or Subcontractors.

#### 11.16. Vendor’s Proprietary Information

Vendor acknowledges that DRS is subject to chapter 42.17 RCW, the Public Disclosure Act and that this Contract shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Vendor to be confidential or proprietary must be clearly identified as such by the Vendor. To the extent consistent with chapter 42.17 RCW, DRS shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, DRS will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, DRS will release the requested information on the date specified.

### 12. CONTRACT EXECUTION

#### 12.1. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

#### 12.2. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

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***In Witness Whereof***, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

**APPROVED**

*State of Washington*

*Department of Retirement Systems*

**APPROVED**

*Vendor, Inc.*

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SIGNATURE

DATE

**John Charles**

**Director**

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NAME

TITLE

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SIGNATURE

DATE

---

NAME

TITLE

**APPROVED AS TO FORM:**

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SIGNATURE

DATE

Evelyn Fielding-Lopez, Assistant Attorney  
General

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NAME

TITLE

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**Schedule A**  
**Authorized Product and Price List**  
**Contract No. DRS 01-601**  
**with**  
***Vendor***

Vendor is authorized to sell **only the products identified in this Schedule A at the prices set forth in this Schedule A** under the above-referenced Contract. This Schedule may only be modified in writing by DRS Contract Administrator.